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ABSTRACT

This instructor's guide was prepared in conjunction with the bicentennial celebration of the U.S. Constitution and to accompany a four-part series about the document's impact on citizen's lives. A separate guide, for use in secondary school classrooms, is included for each of the programs. Each guide contains: (1) a brief discussion of the contemporary controversies portrayed in the program and the constitutional principles involved; (2) background information and exercises, suitable for use prior to viewing the program; (3) activities and worksheets to guide viewers and focus attention on important issues; (4) post-viewing activities to enhance critical thinking skills; and (5) a list of selected resources on constitutional related topics. A final section includes definitions, additional activities, and general resource materials. Information concerning distribution of these programs on videotape is provided, and pictures are included. (JHP)

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An Instructor's Guide

We The People

A four-part television series produced for PBS

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THIS GUIDE PRODUCED IN ASSOCIATION WITH WORLD BOOK

AMERICAN BAR ASSOCIATION • SPECIAL COMMITTEE ON YOUTH EDUCATION FOR CITIZENSHIP

About the Program

WE THE PEOPLE is a four-part series of hour-long programs about the Constitution's impact on the lives of Americans today. Peter Jennings, anchor of ABC's World News Tonight, is the host and narrator of the series, which is introduced by President Reagan.

The series premieres on Tuesday, September 22, 1987, at 9:00 p.m., ET on PBS (Public Broadcasting Service). Be sure to check local listings for the broadcast date and time in your community. The four programs and their original airdates are:

I. **Free to Believe** (September 22)
II. **What Price Equality?** (September 29)
III. **Law and Order** (October 6)
IV. **Who's in Charge?** (October 13)

WE THE PEOPLE was produced by KQED-TV/San Francisco and developed jointly with the American Bar Association Commission on Public Understanding About the Law. Major funding for the series has been provided by Merrill Lynch & Co., Inc. Additional funding has been provided by law firms nationwide, the Corporation for Public Broadcasting, the Ford Foundation and the George Gund Foundation.

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About the Guide

This instructor's guide has been prepared as part of the ongoing Youth Bicentennial Initiative of the American Bar Association's Special Committee on Youth Education for Citizenship (YEFC). It was written by Prof. David T. Naylor of the University of Cincinnati, a member of the Special Committee's Advisory Commission, and edited by Howard F. Kaplan.

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What's Inside

Included inside are guides for each of the four *WE THE PEOPLE* programs. Each guide contains these five sections:

- *Overview* — a brief discussion of the contemporary controversies the program covers and the principles involved
- *Before Viewing the Program* — background information and exercises to prepare students before they see the program
- *While Viewing the Program* — sample worksheets and other activities to guide viewing and focus attention on the important issues
- *After Viewing the Program* — suggested activities to enrich understanding of the programs and enhance critical thinking and viewing skills
- *Resources* — short selective list of available resources on pertinent constitutional topics (additional curriculum and general resource materials are listed on pp. 20-21)

A final section on Fundamental Principles (pp. 18-21) supplements the four preceding program guides. This section contains (1) working definitions of fundamental constitutional principles (2) suggested activities focusing on the actual document of the Constitution, its wording, meaning and interpretation and (3) general resources, including exemplary curriculum materials, resource books and periodicals on the Constitution.

How to Use This Guide

The suggested activities included in this guide can be used with students in eighth grade and above, or with adults in community-based programs.

In the Classroom

Teachers should be prepared to provide additional information about the issues raised and to stress the constitutional framework in which they must be considered. Remember to take advantage of the expertise of community resource persons, such as attorneys, police officers or judges. Ask them to become involved by participating in classroom activities. Refer to the Fundamental Principles section at the end of this guide to review constitutional principles and make sure your students are familiar with them. Consult the general resources section on pp. 20-21 for further information on how to supplement the use of this guide.

Out of the Classroom

Put your students on the move. Many of the suggested activities in the guide can be adapted for use in the community. For instance, students could use the activity, "What's Your Opinion?" (p. 10) or similar "taking a stand"-type exercises to survey their community before or after viewing the program. Have them first complete the activity themselves. Then assign students to survey different members of the community — at shopping malls, places of worship, meetings of local groups or organizations, at home, and other places. Choose sites and those to survey based upon the specific exercise and also on local needs and interests. After the surveys are completed, have students report their findings to the class, compare responses and discuss them.

In the Community

Although the words "teachers" and "students" are used throughout this guide, the activities can certainly be adapted for use by community groups and/or by community-based programs.

- *Use the programs and the guide* to generate ideas and provide information on contemporary constitutional issues of concern to *your* community.
- *Become partners.* Plan activities in which community groups and schools can work together.
- *Stage* a "community forum" such as a debate or mock trial. *We the People: A Handbook on Community Forums on the Constitution* provides a number of booklets with scripts for community forums. ABA/Order Fulfillment, PC#468-0011. Cost: $10.00.

Program Videotapes

Given the length and content of the programs, teachers and discussion leaders may wish to videotape them and use appropriate segments during post-viewing instructional sessions. Legal guidelines stipulate that the videotapes must be used for an educational purpose, within seven days of the original airdate and shown no more than twice to the same group of students or participants within that period of time. After seven days, the videotape may be retained for teacher use for up to 45 days, but it must be erased at the end of that period of time. Permanent retention of videotaped copies is a violation of copyright law. School personnel may not videotape the programs in anticipation of teacher use; they may only do so at the specific request of a teacher.

For future use, the program will be available on videotape to either rent or purchase. Contact the distributor, Films for the Humanities, Box 2053, 743 Alexander Road, Princeton, NJ 08543, (800) 257-5126 or (609) 452-1128, for ordering information.

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PROGRAM ONE

Overview of the Program

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." So states the First Amendment. But what happens when these constitutionally guaranteed freedoms are *actually* pushed to their limits or otherwise tested? This is the question which "Free to Believe," the first program in the *WE THE PEOPLE* series addresses by examining several divisive contemporary First Amendment disputes. What limits should be placed on freedom of speech, or of the press? In what ways, if any, should religion be taught in the schools?

The program focuses on Mobile, Alabama, where Fundamentalists are concerned with what they see as efforts "to divorce religion from everything but the church building." Challenging this restriction, they're claiming that a number of state-approved textbooks themselves violate the separation of church and state by promoting the Godless religion of "secular humanism." Also covered in "Free to Believe" is whether high school students in St. Augustine, Florida, have the right to hear an anti-contra demonstrator speak about his experiences as an American teaching in Nicaragua. At issue is the right not just to hold a belief, but the freedom to express it.

Whether as a matter of conviction or one of action, the program presents us as citizens with this to consider: In what ways and in what circumstances, are we free to believe — and free not to believe?

Before Viewing the Program

1. Write the following on the chalkboard — "Freedom is . . . ." Have students brainstorm to complete the unfinished sentence. Write all responses on the chalkboard. Then have students share reactions to them. Have students use the responses to formulate an individual and/or group definition of this important concept. Save and refer to it after students view the program.

Susan Wise

2. Have students examine the U.S. Constitution to find where religion is specifically mentioned in it. This occurs in only two places — Article VI, section 3 (no religious test) and the First Amendment. Discuss the historical context in which the Constitution was written, focusing on concerns about religion.

3. Explain the three part test used by the Supreme Court to decide cases involving the First Amendment's "establishment clause" (separation of church and state). This test is called the "Lemon test" after the *Lemon v. Kurtzman* case (1971). To be found constitutional (1) a law must have a secular, not a religious, purpose, (2) the primary effect of the law must be to neither advance nor hinder religion, and (3) the law must not bring about an excessive entanglement between government and religion.

4. Have students read the First Amendment. Focus on other freedoms provided in it — freedom of speech, freedom of the press, and the right of the people to assemble peaceably and petition the government for redress of grievances. These freedoms are also discussed in the program.

Divide students into groups.

a. Assign each group responsibility for generating reasons for the importance of freedom of speech, freedom of the press, or the right of the people to assemble and petition the government. Ask each group to report its findings. List them on the chalkboard.

b. Then ask each group to prepare a list of circumstances in which the freedom they have been assigned may be restricted. If students feel there should be no restrictions, have them generate a list of reasons to support that position. Follow a similar procedure for sharing each group's responses.

While Viewing the Program

Prior to viewing the program, teachers should provide students with a worksheet similar to the one on page 3. Familiarize them with the questions on this sheet before they watch the program. Have them think about the questions and take notes on them while they view it. After viewing, students should complete the worksheet to prepare for classroom discussion. If your class is viewing a videotape of the program, preview it to determine if there are appropriate stopping points for focusing discussion. Use the worksheet to guide the discussion. Feel free to adapt the sample worksheet to fit the particular needs of your students.

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Sample Worksheet: Free to Believe

Directions: *This program presents several First Amendment disputes involving freedom of expression and religious freedom. Familiarize yourself with the questions on this sheet before watching the program. Then, as you watch the program, think about each question. You may wish to take notes on a separate piece of paper while watching it. Afterwards, think about what you have seen and write out answers to each of the questions on this sheet.*

1. What issues are involved in the textbook controversy shown in this program?

2. With which constitutionally guaranteed freedoms is the textbook controversy concerned?

3. What did Judge Hand decide in this case? How would his decision affect the students in the schools?

4. Why might people disagree about what "secular humanism" is?

5. Do the people who claim that secular humanism is a religion support church-state separation?

6. What reasons are given in the program in support of, and in opposition to, state-sponsored prayer?

7. What does requiring prayer in the schools have to do with freedom of expression?

8. Why was Fred Royce not allowed to speak to the high school students in St. Augustine, Florida?

9. Judge Hand stated that his ruling in the textbook case did not represent a ban on the books? Do you agree? Give reasons for your answer.

After Viewing the Program

1. Have students report on the instances of people exercising their right to religious freedom as shown in the program. List these on the chalkboard. How free should people be to express their religious beliefs? What limitations, if any, should there be to this? For example, should people be able to:

   a. Attend the place of worship of their choice?

   b. Pray on their own at any time or place?

   c. Use poisonous snakes as part of a religious ceremony?

   d. Use illegal drugs in the name of religion?

   e. Have more than one spouse if their religion encourages it?

   f. Refuse medical treatment for their children in life or death situations because of their religious beliefs?

2. Have students report on controversies over separation of church and state. List these on the chalkboard. Discuss why some people would favor or object to:

   a. Singing Christmas carols in school

   b. Opening public meetings with prayer

   c. Requiring the biblical story of creation as part of the school curriculum

   d. Requiring all students to salute the American flag and recite the pledge of allegiance

   e. Opening each school day by reciting the Lord's Prayer, even though all students would not be required to say the prayer

3. Review the textbook case discussed in the program. Ask students to role play this case by conducting a *pro-se* court simulation. A *pro-se* court uses a simplified mock trial procedure, focusing on deliberation of the issues of a case. Use the sample descriptions of the "Facts," the "Issue" and the "Decision" suggested below. Divide the class into groups of three. Distribute copies of the "Facts" and the "Issue" to students and review with them. Have students select their roles: the plaintiff speaks first, followed by the defendant. Each side should present their position on the issue based on the facts. The judge then may ask questions before rendering a decision and stating reasons for the ruling.

   To debrief the simulation, have judges explain their decisions to the whole class. If the judges disagree, have them discuss their decisions. Read the "Issue" and the "Decision" to the class. Pose such questions as: Which was the most difficult role to play — plaintiff, defendant or judge? Was Judge Hand's decision fair? What might happen if the case reaches the Court of Appeals? How do you feel the Court will rule? What other issues, besides strictly legal ones, does this particular case raise?

Facts

a. In *Wallace v. Jaffree* (1985), the Supreme Court found that an Alabama law requiring the school day to begin with a moment of silence for the purpose of encouraging voluntary prayer or meditation violated the constitutional prohibition against establishing religion.

b. *Wallace v. Jaffree* upheld reversal of an earlier ruling by federal Judge Brevard Hand of the Southern District of Alabama. Hand had argued that the First Amendment applied only to the federal government, not to the states.

c. In the textbook case in Mobile, Alabama, Fundamentalists sued the state board of education, claiming that 45 state-approved textbooks should be removed from the public school curriculum because they promote "secular humanism," a Godless religion. Using Jaffree's argument from the earlier case, they argued this amounted to sponsorship of religion by the state.

d. Groups supporting the board of education in the suit believe that, on

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the grounds of freedom of expression, educators, not religious groups, should determine what is taught in the public schools.

Issue

Does use of the state-approved textbooks devoid of references to God or religion violate the First Amendment's "establishment clause" concerning the separation of church and state?

Decision

Judge Hand decided that most of the textbooks did indeed promote the religion of "secular humanism." He therefore ruled that they could not be used as part of the school curricula, except in comparative religion classes. He insisted that he was not banning use of the books, but only their use to promote a "religious teaching." (Three weeks after the judge's decision, the textbooks were again being used in the schools. Pending appeal, the federal Court of Appeals suspended the judge's order.)

4. Use the "Lemon test" as a tool to help students think about separation of church and state. Prepare a chart on the chalkboard or a large piece of brown paper or newsprint with the heading, "Separation of Church and State." Draw a "wall" in the middle of this chart. Label one side of the wall, "violates" and label the other side, "does not violate."

Then have the students complete the exercise, "Is it Constitutional?," applying the Supreme Court's "Lemon test." Tally student responses. Discuss each situation, clarifying the issues and the decision of the Court. Based on the Court's decision place the situation on the appropriate side of the "wall." Ask students if they agree with the Supreme Court's rulings in each case. Have them support their opinion by referring to the "Lemon test." Since 1971 the Court has generally used the "Lemon test" to decide cases involving separation of church and state.

Case citations are provided in this exercise for reference and future use. Invite a lawyer to share additional information with students.

Is it Constitutional?

Directions: *Each of the following situations involves an action by a state. Do you believe the state (yes) violates or does not violate (no) the principle of separation of church and state when it:*

	Yes	No
1. Grants tax exemptions to religious organizations for property used exclusively for religious worship?	____	____
2. Requires that, as a condition for holding public office, state officials must declare a belief in the existence of God?	____	____
3. Opens state legislative sessions with prayer and pays chaplains for this service?	____	____
4. Uses public funds to provide bus transportation for students attending non-public church-sponsored elementary and high schools?	____	____
5. Requires students in the public schools to salute the American flag and recite the pledge of allegiance, which states "One nation under God"?	____	____
6. Requires moments of silence for voluntary prayer or meditation at the opening of each school day?	____	____

Answers

1. No. *Walz v. Tax Commission of New York,* 397 U.S. 664 (1970).

2. Yes. *Torcasco v. Watkins,* 367 U.S. 488 (1961).

3. No. *Marsh v. Chambers,* 463 U.S. 783 (1983).

4. No. *Everson v. Board of Education,* 330 U.S. 1 (1947).

5. Yes. *West Virginia State Board of Education v. Barnette,* 319 U.S. 624 (1943), which reversed the Court's earlier ruling in *Minersville School District v. Gobitis,* 310 U.S. 586 (1940).

6. Yes. *Wallace v. Jaffree,* 105 S.Ct. 2479 (1985) [Note: Mr. Jaffree appears in the program "Free to Believe."]

Deciphering Case Citations

In this guide citations such as 105 U.S. S.Ct. 2479 (1985) pop up after the names of cases. What do these hieroglyphics mean? And how can you make use of them? These citations tell you where to find the full decision in the case. The first number (105 in this example) tells you in which volume of a series the case appears. The second part of the citation (S.Ct.) tells you which series is involved — in this instance, the Supreme Court Reporter. The next number (2479) is the page number on which the case begins. If it is followed by a comma and a second number, that tells you the specific page in the decision which is being referred to. The final number is simply the year the case was decided. Citations for decisions of other federal as well as state courts use the same format, the only difference is the reporter series in which the case appears.

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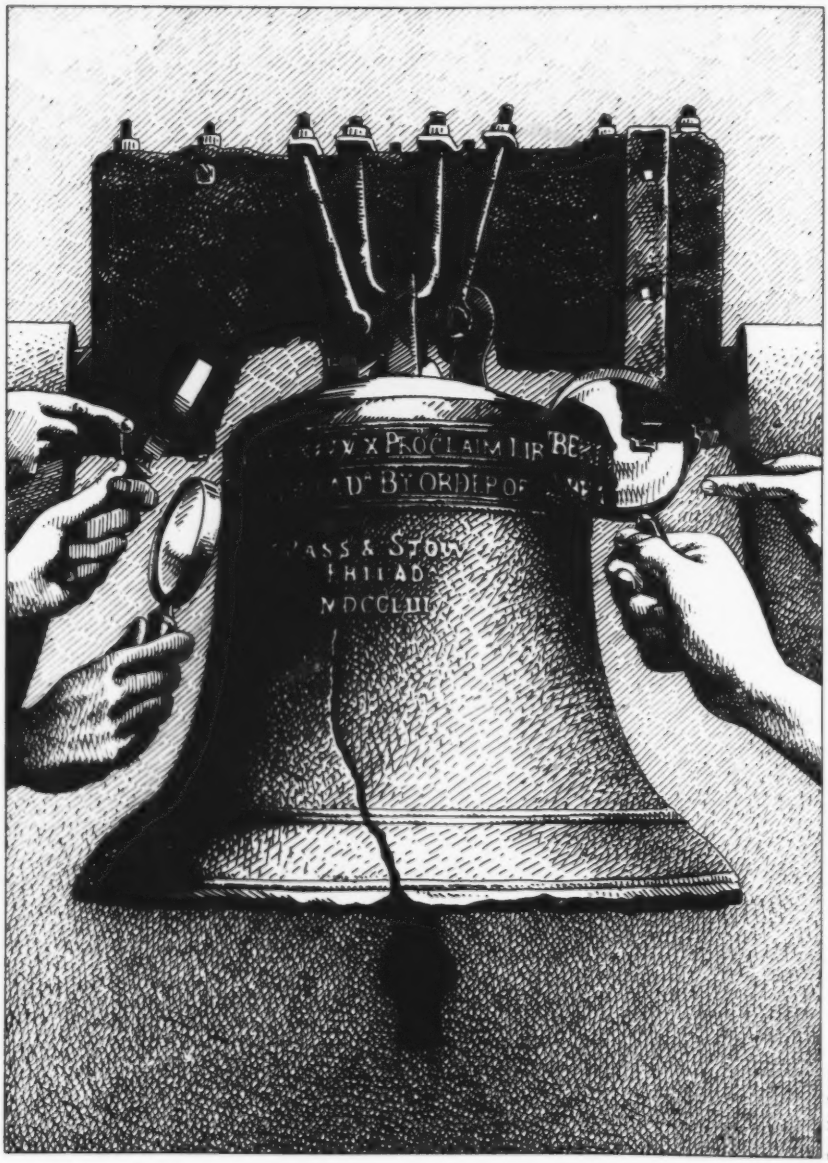

5. Consider the following statement by President Kennedy: "I think that it is important for us, if we're going to maintain our constitutional principles, that we support Supreme Court decisions even when we may not agree with them." Once the Supreme Court makes an authoritative decision about a law or act, who is constitutionally responsible for seeing to it that the decision of the court is followed? Refer to the portion of the program which shows students praying in Alabama's public schools 20 years after the Supreme Court held that this activity was unconstitutional. Who should be responsible to see that Supreme Court decisions are enforced? Ask students to write position papers outlining reasons supporting their views.

Throughout this guide, full addresses for distributors cited more than once (e.g. the Constitutional Rights Foundation) are listed on p. 21.

Resources

"Liberty: Constitutional Update," *Bar-School Partnership Handbook.* 1987. Includes recent articles and activities reprinted from *Update* magazine. ABA/YEFC. Cost: $2.00.

"Religion, Morality and American Education," *Bill of Rights in Action.* Vol. XVII, No. 1, February/March 1983. Twenty-eight page magazine designed for classroom use includes discussions of "secular humanism," school prayer and censorship, along with activities for students. Constitutional Rights Foundation. Cost: 50¢, single copy; 35/$10.00.

Religious Freedom in America: A Teacher's Guide, Charles Haynes. 1986. Background articles and resources for teaching about religion and religious freedom in America. Resource listings follow. Americans United Research Foundation, 900 Silver Springs Avenue, Silver Springs, MD 20910. Cost: $2.00.

The Idea of Liberty: First Amendment Freedoms, Isidore Starr. 1978. Textbook covers the six freedoms guaranteed by the First Amendment and includes related landmark Supreme Court cases. Stresses use of case study method to teach critical thinking skills. West Publishing Company. Cost: $13.75; classroom set, $9.96 each.

Sources of Our Liberties, Richard L. Perry, ed. Revised edition, 1978. Single volume containing the text of English and American documents from the Magna Carta to the U.S. Constitution, with accompanying introductions, notes and bibliographies. American Bar Foundation, 750 N. Lake Shore Drive, Chicago, IL 60611. Cost: $7.50 plus $2.50 postage and handling charge.

The First Freedom: The Tumultuous History of Free Speech in America, Nat Hentoff. 1980. Discusses First Amendment rights of students, teachers and librarians and details case histories which elucidate contemporary controversies on freedom of speech. Doubleday and Co., 501 Franklin Ave., Garden City, NY 11530. Cost: $14.95.

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PROGRAM TWO

Overview of the Program

Equal protection of the laws is one of our most cherished values. As an ideal, few take issue with it. But when applied to real situations, it often leads to volatile controversies. In "What Price Equality?," the second in the *WE THE PEOPLE* series, we come face to face with two such contemporary controversies. The first, in Yonkers, New York, involves a community in which segregated schools and segregated housing have been intentionally maintained by community officials for more than 40 years. The second, in San Francisco, California, concerns discriminatory hiring practices which have effectively prevented women and minorities from becoming members of that city's fire department. In both situations, Federal District Court judges have ruled these practices unconstitutional and ordered community officials to take appropriate steps to correct them.

Depicting community reactions to these court orders, this program reveals the intense feelings these situations engender and the difficulties they pose for the persons involved in them. In the process, the program vividly demonstrates the role the courts play in enforcing the law and how they are often called upon to resolve issues of inequality many do not wish to deal with. When the political process fails to live up to the "promise of equality," the courts have assumed this responsibility for making our decisions — decisions about how we live and work and how our children are educated — for us. Ultimately, the program poses the following question: Who will be responsible for such decisions — the people or the courts?

Before Viewing the Program

1. Using a transparency or duplicated copies, focus attention on the following excerpt from the Declaration of Independence. "We hold these truths to be self-evident: that all men are created equal; that they are endowed, by their Creator, with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness." Ask such questions as: What does the phrase, "all men are created equal" mean? In what ways are people equal? In what ways are they not equal?

Items 2 and 3 below present a selected historical overview of issues of equality for blacks and women, respectively. Feel free to cover more or less information, based upon the needs, interests and background of your students.

2. Discuss the relationship between blacks and the Constitution. Emphasize that the extension of equal rights and the development of equal opportunity for blacks has been an evolving judicial and legislative process. Reproduce the "Timeline for Racial Equality" found below. Use it as a guide to cover the important points that follow. (Figure 1)

a. The words "slave" and "slavery" are never mentioned in the Constitution that was adopted in 1787. The word "slavery" first appears in the Thirteenth Amendment. Yet provisions related to slavery are included in a number of sections, such as Article I, sections 2 and 9; Article VI, section 2; and Article V.

b. In *Dred Scott v. Sanford,* 60 U.S. 393 (1857), the Supreme Court held that under the Constitution slaves were not citizens, but property, and that Congress had no power to prevent slavery in new territories.

c. The "Civil War" Amendments, the Thirteenth (1865), the Fourteenth (1868) and the Fifteenth (1870), abolished slavery, made former slaves citizens and gave them the right to vote. Beyond this, provisions of the Fourteenth Amendment have provided the basis for many Supreme Court rulings on civil rights.

d. Discuss the failure of the courts to ensure equality for blacks following the Civil War. Note that the *Civil Rights Cases* (1883) held that the Civil Rights Laws of 1866 and 1875 were unconstitutional and that the equal protection clause of the Fourteenth Amendment applied only to official government acts, not the private acts of individuals. The latter ruling on the equal protection clause is still the law.

e. In *Plessy v. Ferguson,* 163 U.S. 537 (1896), the Supreme Court sanctioned segregation by upholding the doctrine of separate but equal facilities.

f. In the landmark decision in *Brown v. Board of Education,* 347 U.S. 483 (1954), the Court ruled that "separate educational facilities are inherently unequal." In *Brown v. Board of Education,* 349 U.S. 294 (1955), the Court required the lower federal courts to develop plans to admit black children to schools "on a racially nondiscriminatory basis with all deliberate speed."

g. Discuss opposition to the *Brown* decision and the intervention of the courts to move reluctant public officials to desegregate schools.

FIGURE 1 — **A Timeline for Racial Equality**

Constitution Written	*Dred Scott*	"Civil War" Amendments	Civil Rights Cases	*Plessy v. Ferguson*	*Brown v. Board of Education*	Civil Rights Act
1787	**1857**	**1865-1870**	**1883**	**1896**	**1954**	**1964**

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h. Review the civil rights movement, spearheaded by Dr. Martin Luther King, Jr., and the 1964 Civil Rights Act, which barred all discrimination based on race, religion, creed, national origin or sex in employment, in public accommodations, and in all enterprises funded by the federal government.

i. In *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), the Court held that Congress had the authority to pass laws banning racial discrimination in housing.

3. Reproduce the "Timeline for Women's Equality." Use it as a guide to cover the important points that follow. **(Figure 2)**

FIGURE 2 – **A Timeline for Women's Equality**

Constitution Written	*Minor v. Happersett*	Nineteenth Amendment	*Reed v. Reed*	Equal Rights Amendment Lapses
1787	**1874**	**1920**	**1971**	**1982**

a. Letter from Abigail Adams to her husband John Adams, March 31, 1776: ". . . in the new Code of Laws which I suppose it will be necessary for you to make I desire you would Remember the Ladies, and be more generous and favorable to them than your ancestors. Do not put such unlimited power into the hands of the Husbands. Remember all Men would be tyrants if they could. If perticuler care and attention is not paid to the Ladies we are determined to foment a Rebelion, and will not hold ourselves bound by any Laws in which we have no voice, or Representation." [spelling in original form]

b. In *Minor v. Happersett*, 88 U.S. 162 (1874), Virginia Minor sued for denial of one of the fundamental rights of citizenship – the right to vote. The Supreme Court held that voting was a state matter, not a federal one. "Our province," the Court held, "is to decide what the law is, not to declare what it should be."

c. The Nineteenth Amendment, ratified in 1920, gave women the right to vote.

d. In *Reed v. Reed*, 404 U.S. 71 (1971), the Supreme Court held for the first time a law which treated men and women differently solely because of their sex was in violation of the equal protection clause of the Fourteenth Amendment.

e. The proposed Equal Rights Amendment, for which time ran out in June, 1982, three states shy of the required 38. It stated, "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

While Viewing the Program

Prior to viewing the program, teachers should provide students with a worksheet similar to the one on page 8. Familiarize them with the questions on this sheet before they watch the program. Have them think about the questions and take notes on them while they view it. After viewing, students should complete the worksheet to prepare for

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Sample Worksheet: What Price Equality?

Directions: *This program shows two communities coming to grips with discriminatory practices which have been declared unconstitutional. Familiarize yourself with the questions on this sheet before watching the program. Then, as you watch the program, think about each question. You may wish to take notes on a separate piece of paper while watching it. Afterwards, think about what you have seen and write out answers to each of the questions on this sheet.*

1. What was the major school problem this community faced?

2. What was the major housing problem this community faced?

3. Why is the Yonkers case a landmark civil rights case?

4. Why was the segregated housing problem in Yonkers more difficult to resolve than the segregated schools problem?

5. Who elects a city council member? Who appoints a federal judge? To whom are they each accountable? What powers does each have?

6. Did all city council members vote on the housing problem in a way which you expected?

7. How would you explain San Francisco's decision not to hire any women fire fighters? What arguments could you give to justify this situation? Would you use the same arguments to justify not hiring minorities?

8. Why do issues of inequality like those described in the program often require judicial intervention?

9. Did the judges in the Yonkers and San Francisco cases have too much power? Why or why not? Give reasons for your answer.

10. In the program, President Johnson said "We seek not just freedom, but opportunity; not just equality as a right and a theory, but as a fact and equality as a result." Based upon the program, what remedies have been developed to achieve equality as a result?

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classroom discussion. If your class is viewing a videotape of the program, preview it to determine if there are appropriate stopping points for focusing discussion. Use the worksheet to guide the discussion. Feel free to adapt the sample worksheet to fit the particular needs of your students

After Viewing the Program

1. Discuss the concept of affirmative action. ("Affirmative action" refers to the policy of using racial or gender classifications to foster equality by compensating for the continuing effects of previous discriminatory practices.) Use the information on affirmative action cases included below to explore students' reactions to the goals of affirmative action and the difficulties it poses. Begin the discussion by asking students to come up with definitions of "affirmative action."

   a. *University of California Regents v. Bakke* 438 U.S. 265 (1978): The Supreme Court struck down a medical school's admission policy which set aside a specific number of places for minority applicants, but approved use of race as a positive factor in making admissions decisions favorable to student diversity. It held that absolute preference for minority group members was unconstitutional.

   b. *United Steelworkers v. Weber*, 443 U.S. 153 (1979): The Supreme Court approved a voluntary plan (part of a collective bargaining agreement) to set aside one-half of all openings in an on-the-job training program for black workers until their number equaled the percentage of blacks in the labor force.

   c. *Local 28, Sheet Metal Workers International Association v. Equal Employment Opportunity Commission*, 106 S.Ct. 3019 (1986): The Supreme Court affirmed that affirmative action hiring plans may be sustained even if they benefit minority members who were not personally discriminated against.

   d. *Johnson v. Transportation Agency of Santa Clara*, 55 U.S.L.W. 4379 (1987): The Court upheld the voluntary affirmative action plan adopted in 1979 in Santa Clara County. This was the first time the Court had upheld such a plan based on gender and on statistics showing that women were underrepresented in certain job categories.

2. Ask students to respond to the question Peter Jennings poses in the program: "Is it fair that people who are not responsible for past discrimination . . . should be forced to make sacrifices now in order to correct it?" Have them literally "take a stand" on this issue — all those who answer "yes" should move to one side of the classroom, "no" to the other and "undecided" to the middle. Request volunteers from each group to offer reasons in support of their position. Write these on the board. Give students an opportunity for rebuttal — countering arguments based on reasons already stated. Now review the information on affirmative action cases and/or invite a resource person, such as a lawyer or a labor official, to speak about affirmative action. Conclude the activity by asking students to "transfer" — move to another group, if they have changed their minds. Have the "transfers" discuss why they switched positions.

3. Review the questions on the worksheet to discuss the housing discrimination situation in Yonkers. Stress the connection between

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segregated housing and segregated schools. Have students role play the meeting of the city council on the eve of Judge Sand's deadline. The deadline required that a plan be submitted to end intentional housing discrimination in Yonkers by having public housing built in all sections of the city. Review the options available to the city council: they could help develop a plan themselves or, if they refused to develop one, they would face fines and/or imprisonment. Also, if they refused, the judge would appoint a "housing master" to develop a plan without input from the city council. Assign students to role play this scenario. You may want to consider the following positions advocated in the program:

a. "I'm not about to surrender to a judge on intimidation." (city council member)

b. "If we don't have our legal system, what do we have? We have anarchy." (mayor)

c. "The issue is plain and simple . . . do we allow the plaintiffs to put that plan together, or do we participate." (city council member)

4. Review the "Timeline for Women's Equality" and the accompanying overview. Use the following questions to focus on the issues of women's equality, employment discrimination and affirmative action. Why did Abigail Adams speak of limiting the power of "husbands"? Was she proposing that women be granted rights equal to men? Why do you think that, on the federal level, women were granted the right to vote through a legislative, rather than a judicial, process? What's the difference between equality of rights and equality of condition? How is this related to the "promise of equality" referred to in the program? What do you believe the effects of the ERA would be if it were ratified? Do you believe affirmative action should apply to women, as well as to minorities? How is discrimination against women different from discrimination against minorities? How is it similar?

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Resources

"Equality: Constitutional Update," *Bar-School Partnership Handbook.* 1987. Includes recent articles and activities reprinted from *Update* magazine. ABA/YEFC. Cost: $2.00.

Social Justice, David L. Bender and Bruno Leone, eds. 1984. Anthology of essays presents opposing viewpoints on affirmative action, equality of women and other topics. Very useful for student debates, critical thinking activities and values clarification. Greenhaven Press. Cost: $6.95.

Racial Equality, Laughlin McDonald. Revised ed., 1983. *Women and the Law,* Cary et al. 1978. Published in conjunction with the American Civil Liberties Union, both books are part of the "To Protect These Rights" series. National Textbook Company. Cost: $12.95 each.

Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality, Richard Kluger. 1977. Recounts the fight against segregated schools from Reconstruction through the civil rights movement of the 1960s. Alfred A. Knopf. Cost: $15.95.

"Ourselves and Our Daughters Forever: Women and the Constitution, 1787-1876," Linda K. Kerber. *this Constitution,* Spring, 1985, pp. 25-36. Reviews the political status of women during the first hundred years of the republic. Includes handout on letters exchanged between Abigail and John Adams. Project '87. Cost: $4.00 single issue.

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PROGRAM THREE

Overview of the Program

What price should citizens pay for safety and security? When should individual rights be restricted in order to achieve these goals? These are the basic questions addressed in "Law and Order," the third program in the *WE THE PEOPLE* series. The program begins by examining the problem of drunk driving, which is responsible for the deaths of nearly 25,000 Americans annually and the injury of many thousands more. We see one way that one city, Boston, has decided to deal with the problem — having police arbitrarily stop drivers to test their sobriety. Ironically, as the program depicts, the Boston police are themselves in court contesting the commissioner's drug-testing program by appealing to their constitutional rights.

The scene then shifts to Oakland, California, a city plagued by rampant trafficking in illegal drugs. To combat this problem, the Oakland police have stepped up their anti-drug efforts, including special units designed to catch drug dealers and their customers. These units are conducting searches in ways that challenge the limits of the Fourth Amendment.

In "Law and Order," we observe how the police and the courts use constitutionally controversial practices to attack some of our country's most pressing problems of public order.

In the process, we examine the nature of our constitutional safeguards against unwarranted government intrusion into our privacy. Ultimately, we are forced to consider how the delicate balance between desired ends and appropriate means for achieving them should be struck.

What's Your Opinion?

Directions: *Each of the following statements deals with an issue related to the government's responsibility to control crime and the constitutional rights of the accused. For each, select the response that most closely reflects your opinion.*

	Agree	Disagree	Undecided
1. Lawyers should never defend a person they believe to be guilty of a crime.	____	____	____
2. The death penalty is a necessary form of punishment for those convicted of murder.	____	____	____
3. Police should be given a free hand to apprehend those who commit criminal acts.	____	____	____
4. Those accused of a crime should be forced to testify at their trial.	____	____	____
5. It is better to have ten guilty persons go free than to have one innocent person convicted.	____	____	____
6. Unanimous juries should be required in all criminal trials.	____	____	____
7. All police officers should be required to submit to mandatory drug testing to ensure that they are not using illegal drugs.	____	____	____
8. Protecting an individual's constitutional rights is more important than convicting the guilty.	____	____	____
9. Police should not be able to stop any car unless they have reason to believe the driver has committed a violation of the law.	____	____	____
10. Our constitutional rights are our only protection against the unlimited power of the police and other government officials.	____	____	____

Before Viewing the Program

1. Use the exercise "What's Your Opinion?" to focus student attention on issues related to the rights of the accused and the government's interest in apprehending, convicting and punishing criminals. Many of these issues are raised in the program. Tally and discuss student responses. Explore reasons students give for the positions they take.

2. Reproduce the following continuum which shows five criteria for government action. Ask students to think about the situations presented in the program and how the criteria apply to each of them. (Figure 3)

While Viewing the Program

Prior to viewing the program, teachers should provide students with a worksheet similar to the one on page 11. Familiarize them with the questions on this sheet before they watch the program. Have them

FIGURE 3 – **Criteria for Government Action**

Least Amount of Proof				*Greatest Amount of Proof*
Suspicion	**Reasonable Belief**	**Probable Cause**	**Preponderance of Evidence**	**Beyond a Reasonable Doubt**
Request Voluntary Cooperation; Initiate an Investigation	Stop-and-Frisk; Search	Arrest; Search and Seizure;	Judgment in a Civil Case	Conviction in a Criminal Case; Sentencing

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Sample Worksheet: Law and Order

***Directions:** This program deals with the clash between society's interest in combatting crime and the rights of the accused. Familiarize yourself with the questions below before watching the program. Then, as you watch it, try to answer each question. You may wish to take notes on a separate piece of paper while watching it. Afterwards, think about what you have seen and write out answers to each of the questions on this sheet.*

1. Who issues a search warrant? What do the police need to get one?

2. When do the police need search warrants to arrest someone or seize their possessions? When don't they need them?

3. Why is *Mapp v. Ohio* a landmark Fourth Amendment case?

4. How do the following protect the rights of the accused?

- **a)** the exclusionary rule
- **b)** the *Miranda* rights case
- **c)** the *Gideon* case

5. What is plea bargaining? Is it constitutional? Why?

6. Who won in the plea bargaining case in the program? Give reasons for your answer.

- **a)** the accused
- **b)** the public defender
- **c)** the prosecutor

7. Do you think punishment effectively deters crime? What punishment would you consider to be "cruel and unusual"? Give reasons for your answer.

8. Did the Boston police infringe upon the Fourth Amendment rights of drivers by setting up sobriety road blocks to stop every fifth car?

9. Are the Boston police justified in claiming that the commissioner's drug testing program violates their Fourth Amendment rights?

10. How does law sometimes come into conflict with order? Which do you believe should take precedence? Give reasons for your answer.

think about the questions and take notes on them while they view it. After viewing, students should complete the worksheet to prepare for classroom discussion. If your class is viewing a videotape of the program, preview it to determine if there are appropriate stopping points for focusing discussion. Use the worksheet to guide the discussion. Feel free to adapt the sample worksheet to fit the particular needs of your students.

After Viewing the Program

1. Use the worksheet to discuss the issues the program raises about the rights of the accused. Divide students into groups. Give each group one of the following cases. Have each group of students identify the facts in the case, the issues presented, and arguments for each party to the case. Then have students render a decision for their case, giving reasons to support the majority opinion and concurring and/or dissenting opinions, if any. When each group finishes, have it share this information with the class. Discuss their results and the Supreme Court's actual ruling in the following cases not in the program.

- **a.** Three police officers came to Chimel's home with a warrant authorizing them to arrest him for burglary of a coin shop. When they handed him the warrant, they asked if they

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could "look around" his home.

Chimel refused. He was told they could do this since they were making a lawful arrest. Though they had no search warrant, they looked through the entire house. The search took nearly one hour and yielded a number of items, primarily coins. At his trial, Chimel claimed the property taken during the search was inadmissible, being the product of an illegal, warrantless search. The police disagreed, arguing that the search was part of a legal arrest. How would you decide this case?

[*Chimel v. California*, 395 U.S. 752 (1969): The Supreme Court agreed with Chimel that this was an unreasonable and illegal search. The Court held that during a legal arrest the search must be restricted to the person arrested and the area "within his immediate control," "the area from within which he might gain possession of a weapon or destructible evidence." To search more broadly than that, police need to have a search warrant.]

b. Railroad officials in California observed two men loading a footlocker onto a train bound for Boston. They became suspicious when they noticed that the footlocker appeared to be unusually heavy. They also noticed that talcum powder was leaking from it, a substance often used to mask the smell of marijuana. They notified local federal agents, who then notified agents in Boston.

Federal agents, with a trained police dog, met the train when it arrived in Boston a few days later. The dog detected marijuana in the footlocker. When Chadwick came to pick up the footlocker, the federal agents arrested him. A large quantity of marijuana was found when the footlocker was opened. Chadwick claimed the search was illegal because the federal agents did not have a search warrant. The agents claimed a warrant was not needed because they seized it following an arrest. How would you rule?

[*United States v. Chadwick*, 433 U.S. 1 (1977). The Supreme Court held that this was an illegal search. The contents of the footlocker were protected by the Fourth Amendment right of privacy. Furthermore, the Court held that the agents should have obtained a search warrant. They had both sufficient time and sufficient facts to do this. Their failure to do so meant that the evidence could not be used against Chadwick.]

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c. Schmerber was injured in a car accident and was taken to the hospital for treatment. A police officer at the scene of the accident observed that Schmerber had been drinking. Two hours later he came to the hospital and noticed signs indicating that Schmerber was still intoxicated. He then arrested Schmerber and charged him with driving under the influence of alcohol.

After advising Schmerber of his rights, the officer directed a doctor to test Schmerber's blood for alcohol content. Meanwhile, Schmerber's attorney arrived and advised Schmerber to refuse to consent to the blood sample. Despite their objections, it was taken and revealed that Schmerber had been legally intoxicated at the time of the accident. Was this a legal search? What other rights were involved? How would you decide this case?

[*Schmerber v. California*, 384 U.S. 757 (1966). In this case, the Court held that the privilege against self-incrimination does not apply. Fingerprints, body fluids and writing samples, for example, are not protected by the Fifth Amendment. The Court held the search was reasonable. The officer had probable cause to make the arrest. Since he was confronted with an emergency — the percentage of alcohol in the blood begins to diminish with time — there was not sufficient time to obtain a search warrant. The search itself was reasonable since it was commonplace practice and performed by a qualified physician.]

2. Have students develop the components of a newspaper editorial page focusing on issues of the rights of the accused. Examine the editorial page of your local newspaper for format ideas. Enlist assistance from resource persons, such as lawyers, and newspaper editors or reporters. Assign students to work on different

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tasks. Use or adapt the following suggestions for this activity:

a. Prepare letters to the editor by taking "pro" and "con" positions on these issues:

1. Plea bargaining is an unconstitutional practice that should not be permitted in any federal or state court.

2. Mandatory drug testing of police violates their Fourth Amendment right "to be secure in their persons . . . against unreasonable searches and seizures."

b. Assign a "roving reporter" to survey selected students, asking them, "What's Your Opinion?" Use Peter Jennings's question in the program: "Would you be willing to give up some of your rights so that police could fight crime more effectively?" Request a brief answer.

c. Issue editorials, based on the statements presented below. The first two were made by persons in this program. The third is taken from a Supreme Court opinion.

• "I don't think there's any great danger that our Constitution is going to be overthrown, but I think there's a greater danger of its just being eroded away into non-existence by well-intentioned people . . . by people who believe that the primary thing is to get rid of drugs and do whatever it takes to do it — including throwing out the Bill of Rights . . ." (public defender Scott Spear)

• "Even if they suppress all that stuff, so what, okay? We still got the sales case on the suspect, we've taken . . . they're not going to give the dope back to him, so he's out of the money for his dope. We've taken away part of his product, and so we've caused him grief . . . We're causing him grief." (police officer Frank Moschetti)

• "Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." (dissenting opinion by Justice Brandeis in *Olmstead v. United States*, 277 U.S. 438, 1928)

d. Design political cartoons on issues concerning the rights of the accused. Consider search and seizure, plea bargaining, self-incrimination, treason, capital punishment and the right to a speedy and public trial. Focus on situations and issues covered in the program and/or topical issues of local, state or national interest to the students.

3. Based on the activity above, work with students to actually design and produce the editorial page. Ask for help from school or local newspaper staff members. You may want to recruit someone experienced with "desktop publishing" on personal computers. Once the page has been designed, print the first edition for distribution to the class. If you are unable to produce an actual editorial page, copy the pieces developed for the page and distribute them to the class for discussion. Ask students responsible for the different parts of the editorial page to discuss what they did. Elicit comments from other students.

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Resources

"Justice: Constitutional Update," *Bar-School Partnership Handbook*. 1987. Includes recent articles and activities reprinted from *Update* magazine. ABA/YEFC. Cost: $2.00.

"Drink, Drank, Drunk: Can We Stop Highway Slaughter without Infringing Individual Rights?," James P. Manak. *Update*, Spring 1986, pp. 38-44. Discusses the clash between safety on the roads and the rights of motorists. ABA/Order Fulfillment. Cost: $4.00.

Criminal Justice, David L. Bender and Bruno Leone, eds. 1981. Anthology of essays presents opposing viewpoints on rights of the accused, police use of power and other issues. Greenhaven Press. Cost: $6.95.

The Crime Question: Rights and Responsibilities of Citizens. 1984. Part of the Law-In-Social Studies Series. Illustrated student booklets and accompanying teacher's edition. Constitutional Rights Foundation. Cost: $4.50.

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PROGRAM FOUR

Overview of the Program

What happens when you are informed that, through the power of eminent domain, the federal government has chosen your community as a possible site for storing spent fuel from nuclear generating plants across the country? No one wants this dump in their community, but the government maintains it has to go somewhere. How would *you* react to the prospect of having a radioactive, nuclear waste dump located close to where you live? What would you do? What *could* you do? What if your governor also opposed the dump? And your U.S. representative and senators? Could the Department of Energy *still* pick your community as the dump site?

This scenario has actually happened to residents of several communities in New Hampshire. "Who's in Charge?," the fourth and final program in the *WE THE PEOPLE* series, depicts what happened to them and what they're doing about it. Another subject of the program is Governor-turned-U.S. Representative Joseph Brennan of Maine. While governor, Brennan's opposition to the use of his state's National Guard for training exercises in Honduras prompts an examination of the contemporary significance of federalism and states' rights.

Through these controversies, "Who's in Charge?" explores where authority resides and how power works in our federal system of government. As the program unfolds, we consider the relationships between citizens and their government. How is power distributed by the Constitution? How do elected and appointed officials discharge their duties? How can citizens use the means provided by the Constitution to determine, influence, and restrain those in power? Who's in charge? Ultimately, we must realize that *we* are in charge, that in our representative democracy, "government" is a process, as well as an institution.

Before Viewing the Program

1. Begin by having students complete the exercise, "How Do You Feel About the Government?" Tally and discuss student responses. Focus on the responses most commonly chosen by students. Question students to clarify their reasons for why they perceive government the way they do.

2. Discuss the federal bureaucracy. Describe its function, size, power and characteristics. Provide examples of how federal agencies operate (e.g., the Nuclear Regulatory Commission, the Environmental Protection Agency, the Food and Drug Administration). Discuss how factors such as the following influence decision making by federal bureaucrats: the intent of Congress, the provisions in the law, the views of the president, the support and opposition of special interest groups and the views of private citizens.

3. Who decides? Government involves making decisions. Citizenship involves our participation in how decisions are made. Ask students to imagine that plans are underway to approve placing each of the following in their community:

a. Drug treatment center

b. Prison

c. Mental health facility

d. AIDS care center

e. Nuclear-powered electrical plant

f. Abortion clinic

g. Subsidized housing project

h. Elementary school

i. Nuclear waste storage site

j. Halfway house for offenders

For each of the above, have them consider the following questions. Discuss their responses. Which level(s) of government — national, state and local — are probably involved in the decision? Which do you think *should* be involved? Think about reasons for your answer. If

How Do You Feel About the Government?

Directions: *Choose the words in each of the following lists that represent how you feel about the government. Select as many or as few as you wish.*

"I feel . . ."	"The federal government is . . ."	
___ afraid	___ cruel	___ incompetent
___ apathetic	___ dependable	___ meddlesome
___ confident	___ dishonest	___ responsive
___ confused	___ distant	___ secure
___ good	___ efficient	___ superior
___ powerful	___ fair	___ too strong
___ powerless	___ free	___ too weak
___ proud	___ helpful	___ uncaring
___ suspicious	___ honest	___ unfair

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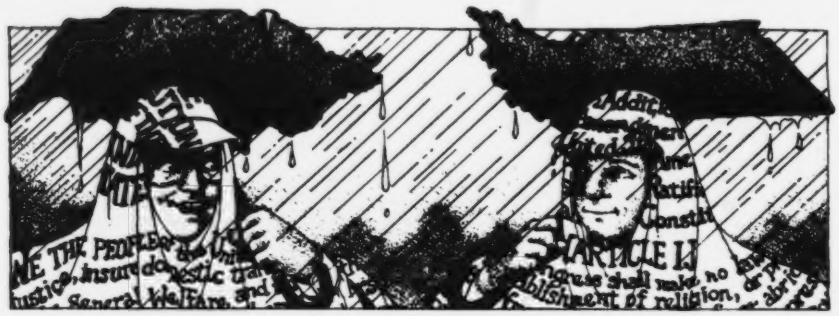

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you were opposed to this (e.g., a nuclear waste storage site) being built in your community, what could you do to prevent it? If you were mayor, what could you do? Governor? U.S. senator? How might each official look at the issue differently?

While Viewing the Program

Prior to viewing the program, teachers should provide students with a worksheet similar to the one on this page. Familiarize them with the questions on this sheet before they watch the program. Have them think about the questions and take notes on them while they view it. After viewing, students should complete the worksheet to prepare for classroom discussion. If your class is viewing a videotape of the program, preview it to determine if there are appropriate stopping points for focusing discussion. Use the worksheet to guide the discussion. Feel free to adapt the sample worksheet to fit the particular needs of your students.

After Viewing the Program

1. Review "eminent domain," the constitutionally authorized power of the government to take private property for public use with just compensation for the owner. Discuss the circumstances under which eminent domain may be used (for example, to build a park, a new school, an airport or a nuclear power generating plant). Have students identify and discuss the rationale for eminent domain and the potential cost and benefits of its use. To enrich the discussion, focus on situations in your community where eminent domain has been used. Invite a lawyer and/or a government official to speak to your class about eminent domain.

2. Have students complete the exercise, "Ways to Influence Government." Tally and discuss responses. Use probing questions to explore reasons for students' rankings. This activity may take place over several class periods.

- **a.** Invite a government official, such as a city council member, the mayor or a state legislator to class. Have this person discuss how they are influenced by citizens. Ask them to complete the exercise and then to talk about why those they ranked the highest are effective ways to influence government decision making.
- **b.** Invite a community activist to the classroom. Have this person talk about ways they influence the government. Give them the exercise to complete. Have them talk about why those they ranked highest are effective methods, based on their own experiences.
- **c.** Ask students to compare their rankings with those of the government official and the community activist. Where do they agree? Where do they

Sample Worksheet: Who's in Charge?

Directions: *This program asks "Who's in Charge?" of our federal system of government. Familiarize yourself with the questions on this sheet before watching the program. Then, as you watch it, try to answer each question. You may wish to take notes on a separate piece of paper while watching it. Afterwards, think about what you have seen and write out answers to each of the questions on this sheet.*

1. Why did the U.S. Department of Energy need to build a nuclear waste repository? Who authorized this federal agency to select the site? Why was the state of New Hampshire selected?

2. What is "eminent domain?"

3. Do you think the people from New Hampshire opposed to the dump would believe that there could be *any* "just compensation" for their land? Why or why not? Give reasons for your answer.

4. What did people from New Hampshire do to get the Department of Energy to prevent the proposed nuclear waste dump from being built?

5. How did officials in the Department of Energy respond? What did they decide to do?

6. What is federalism? How was the National Guard controversy discussed in the program concerned with it? How was New Hampshire's proposed nuclear waste repository concerned with it?

7. What does the "public good" mean? Do you think placing the dump in New Hampshire would be in the public good? Do you think having the National Guard in a foreign country is in the public good? Give reasons for your answers.

8. Why did Joseph Brennan decide to run for Congress?

9. What does the title of the program, "Who's in Charge?" mean? To whom does it refer? Give reasons for your answer.

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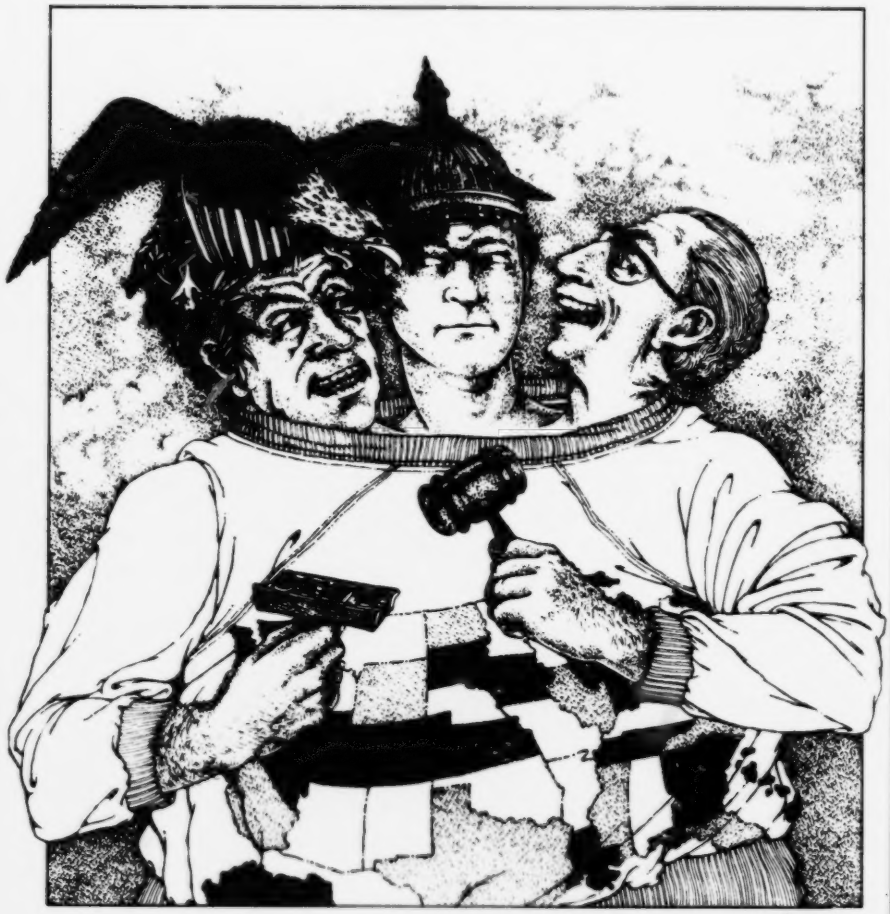

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disagree? Ask them to offer reasons for disagreement.

3. Review the New Hampshire nuclear waste site and the National Guard controversies shown in this program. Use the exercise, "Who Should Have the Power?," to consider how the circumstances of modern life affect the principle of federalism today. After distributing the exercise, first have students identify who, according to the Constitution, has the power in each of these matters. Then ask students to consider if circumstances have changed so as to require a rethinking and redistribution of power between the federal and state governments. Have them complete the exercise. Tally and discuss responses.

4. Have students debate "pro" and "con" positions on topics generated from the following statements about the relationship between citizens and the government. They are adapted from statements made in the program. Several sample topics are suggested for each of the statements. Use them or generate others which may be especially topical for your students. You may want to assign teams of two students to advocate each side.

a. "If the government wants something, it will get it, no matter what we, the people do."

- The federal government's power of eminent domain should be abolished through a constitutional amendment.
- Public opinion, along with elections, is a sufficient restraint upon unpopular government policies.
- Citizens have the right to practice civil disobedience, in order to resist a government action or policy of which they disapprove.

b. "If the government decides it's necessary for the country to build a nuclear waste dump, and my community is well-suited for the dump, then so be it. It is the responsibility of citizens to make personal sacrifices for the good of the nation."

- When in conflict, private interest must be subordinated to the public good.
- As a citizen, my allegiance to my country takes precedence

Ways to Influence Government

Directions: *Listed below are various methods that citizens can use to influence government decisions. Indicate how effective you feel each is ranking them from 1-10, with 1 being the most effective.*

_____ *Writing a letter to your representative in Congress*
_____ *Attending a public meeting to express your views*
_____ *Contributing money to the election of government officials*
_____ *Demonstrating in public*
_____ *Distributing leaflets in public places*
_____ *Voting for the candidates or issues you favor*
_____ *Going on a hunger strike*
_____ *Displaying a button or bumper sticker*
_____ *Joining/contributing money to a group sharing your views*
_____ *Engaging in a boycott*

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Who Should Have the Power?

Directions: *Do the circumstances of life in the United States today require a redistribution of power between the federal government and the states? How do you feel? Who should have the power to do each of the following? For each, check the response that reflects your views.*

	Federal	States
1. To run the public schools	____	____
2. To resolve the acid rain problem	____	____
3. To set the minimum age for driving	____	____
4. To set minimum speed limits for highways	____	____
5. To decide if nuclear power plants should be built	____	____
6. To decide where nuclear power plants will be built	____	____
7. To determine sites for storing nuclear waste	____	____
8. To tax goods imported from foreign countries	____	____
9. To decide the legality of marijuana and cocaine	____	____
10. To set the minimum age for drinking alcohol	____	____

over that to my community.

- Due to the danger posed to public safety, nuclear power plants should no longer be built in the U.S.

Resources

"Power: Constitutional Update," *Bar-School Partnership Handbook.* 1987. Reprints recent articles and activities from *Update* magazine, including "When the Constitution Isn't Enough," (pp. 27-29, 48) by Robert S. Peck and "Comparing State and Federal Constitutions" (pp. 30-33) by Lucinda J. Peach from *Update,* Spring, 1986. They explore the differences between state and federal constitutions and how states may provide greater or different protections. Includes activity on environmental protection. ABA/YEFC. Cost: $2.00.

Information USA, Matthew Lesko. Invaluable guide to how the federal bureaucracy works. Includes information on the EPA, the FDA, the Nuclear Regulatory Commission and other regulatory agencies. Penguin Books. Cost: $9.95.

The Enduring Constitution: A Bicentennial Perspective, Jethro K. Lieberman. Part 5 covers the constitutional theory of property and includes a discussion of eminent domain. See general resources for further information.

The Federalist Papers, Alexander Hamilton, James Madison and John Jay. Original Federalist arguments for the ratification of the Constitution, published in 1787-88. NAL paperback edition available from Social Studies School Service. Cost: $4.95, single copy; 5 or more, $3.95 each. Many other editions available.

A More Perfect Union: The Men and Events that Made the Constitution. 1987. William Peters. Clear narrative account of the background and proceedings of the Constitutional Convention, combined with a cogent analysis of the arguments, compromises and decisions involved. Crown, 34 Englehard Ave., Avenel, NJ 07001. Cost: $22.50.

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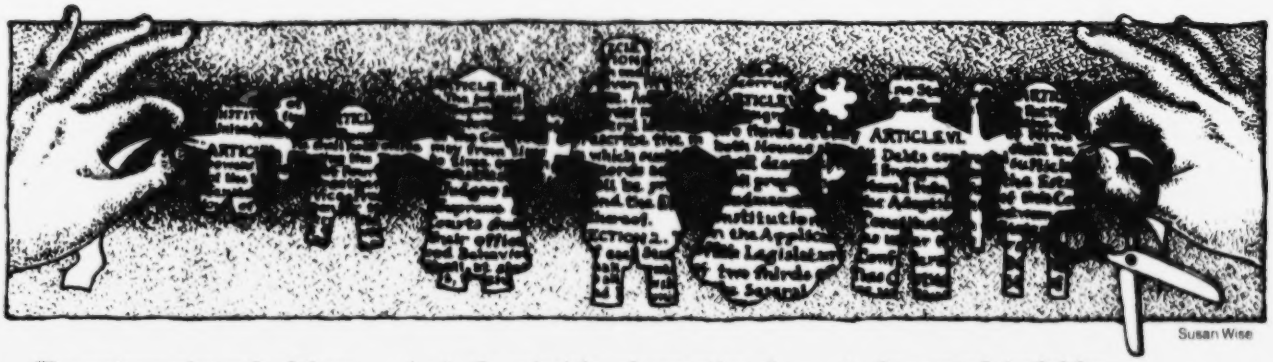

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The controversies each of these four programs examines hit close to home. They involve some of our most cherished values and reveal how we grapple with situations in which those values come into conflict. These controversies challenge us because they pit "good" values against *other* "good" values. The task, as Isidore Starr wrote in a 1975 article, is to choose "which of the good values deserve priority . . . at a given time and place." None of the controversies shown in these four programs can be resolved in a vacuum. Each will ultimately be decided within the context of our constitutional system of government in accordance with fundamental principles embodied in a document written 200 years ago.

Included in this section are working definitions of some of those fundamental constitutional principles. Keep in mind that these principles represent a dynamic legal and political system, often in conflict with itself, which has developed from the original Constitution and is still evolving today. These principles include:

1. *the principle of popular sovereignty,* the idea that we the people are the ultimate source of governmental authority, that all power derives from us

2. *the principle of representative government,* in which citizens elect officials to speak for them in the government

3. *the principle of federalism,* the "delicate balance" in which authority is divided and shared between the federal and state governments

4. *the principles of separation of powers and checks and balances,* in which the legislative, executive and judicial functions are assigned to different branches of government, and interdependent and independent, but limited, roles for each branch are established

5. *the principle of judicial review,* the interpretive power of the courts to declare specific laws and actions by government officials unconstitutional

6. *the principle of amendment,* the capability to legally change or alter the Constitution when warranted

7. *the principle of individual rights,* the assertion that individuals have certain fundamental rights that neither governments nor majorities may violate

Each of these principles is fundamental to our constitutional system. How do they relate to one another? How do they come into conflict in specific cases? What continues to hold them together? Such questions underlie the controversies examined in the *WE THE PEOPLE* series.

The following activities stress the relationship between fundamental principles and their embodiment in the Constitution and its amendments. A final list of general resources contains selected curriculum materials, books and periodicals on the Constitution.

For further information on bicentennial programs and materials contact the American Bar Association, YEFC, 750 N. Lake Shore Drive, Chicago, IL 60611.

Suggested Activities

1. Make a copy of the U.S. Constitution available to each student. Have them examine that document by using activities similar to those that follow.

a. *The Preamble*

- Discuss the importance of the phrase, "We the people." What does it mean? What does Article IV, section 4 provide? Why was it included? What does the Ninth Amendment provide? Why was it included?

- Distribute copies of the Preamble of the first draft of the Constitution, that was proposed on August 6, 1787. Let students compare it with the version ultimately adopted, noting similarities and differences.

(Original Preamble, proposed on August 6, 1787: "We the People of the States of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do ordain and establish the following Constitution for the Government of Ourselves and our Posterity." (modern spellings used here)

- Have students list the purposes the Constitution is to serve, as outlined in the Preamble. Discuss what each means. Explore what would be different if one or more of these purposes were deleted. Ask if

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any others should have been included. Which ones? Why?

b. *Articles I, II and III (separation of powers)*

- Ask students to read Article I, section 1; Article II, section 1 (1); and Article III, section 1. Discuss the principle of separation of powers.
- Have students compare the lengths of Article I, Article II, and Article III. Which is the longest? Which is the shortest? Elicit student hypotheses about why Article I is the first and the longest of the three articles and why Article III is third and the shortest. What does the order and length of these three articles reveal about the system of government the Framers sought to create? Which branch is most powerful today? Why?
- Have students compare and discuss the powers given to each branch of government, as found in Article I, section 8; Article II, sections 2 and 3; and Article III, section 2.

c. *Articles I, II and III (checks and balances)*

Have students read Article I, sections 2 (1) and 3; Article II, section 1 (1) and (2); and Article III, section 1 to determine how the members of the House of Representatives and the Senate, the president and justices of the Supreme Court are selected and the length of time each serves in office. Refer students to the Seventeenth Amendment to see how the process of selecting senators has changed. Discuss why the selection process differs for each of the four offices and how this situation contributes to a system of checks and balances.

d. *Articles I, IV, VI and Amendment Nine (federalism)*

- Have students read Article I, sections 8 and 10 and compile a list of the powers given to Congress and denied to the states. Develop a chart listing powers expressly given to Congress, those reserved for the states and those held concurrently by Congress and the states.
- Develop a series of hypothetical situations involving the principle of federalism similar to the following example. "Given the high rate of ac-

What's in the U.S. Constitution?

Directions: *This is a survey designed to help you assess what you know about the U.S. Constitution, including its amendments. For each section, check "yes" if the item is in the Constitution or permitted by it or "no" if it is not.*

	Yes	No
Which of the following phrases are included in the Constitution?		
1. "We the People of the United States"	____	____
2. "We hold these truths to be self-evident, that all men are created equal"	____	____
3. "We mutually pledge to each other our lives, our fortunes, and our sacred honor"	____	____
4. "That government of the people, by the people, for the people, shall not perish from the earth"	____	____
5. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof"	____	____
Does the Constitution permit the Congress to:		
6. Pass a law without the president's approval?	____	____
7. Remove a president from office?	____	____
8. Raise and support armies?	____	____
9. Declare Christianity to be the official religion of the United States?	____	____
Does the Constitution permit the President to:		
10. Declare war against a foreign nation?	____	____
11. Pass a statute without the approval of Congress?	____	____
12. Remove members from the Supreme Court?	____	____
13. Make valid treaties with foreign nations?	____	____
Does the Constitution permit the members of the Supreme Court to:		
14. Have jurisdiction over controversies between two states?	____	____
15. Suspend the Bill of Rights during time of war?	____	____
16. Hold office for life?	____	____
Which of the following phrases are included in the Constitution?		
17. "The trial of all crimes . . . shall be by jury"	____	____
18. "(Not) be compelled in any criminal case to be a witness against himself"	____	____
19. "No person shall be convicted without proof beyond a reasonable doubt"	____	____
20. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated"	____	____

Key: Yes responses are 1, 5, 6, 7, 8, 14, 16, 17, 18, 20

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cidents involving trucks on a stretch of an interstate highway, the state of Kentucky decides to pass a law banning trucks from driving on that part of the interstate highway. Does the U.S. Constitution permit Kentucky to do this?"

• Explain the nature and significance of the "elastic clause" (Article I, section 8 (18)). Discuss how the powers of the federal government have been expanded by interpretation and amendments (e.g., "the elastic clause" and the Fourteenth Amendment).

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e. *Article III (judicial review)*

Have students read Article III. Ask them to locate where in this article the courts are given specific authority to declare laws unconstitutional. (It is not, in fact, *specifically* stated.) Discuss the principle of judicial review and how it became accepted through the case of *Marbury v. Madison*, 5 U.S. 137 (1803).

2. Have students complete the exercise, "What's in the Constitution?" Tally results. Ask students to refer to the Constitution to confirm or reject their responses. Discuss results.

3. As a follow-up activity to the programs, ask students to look through newspapers and mark or cut out items related to the Constitution and its principles. (Review the preceding section on fundamental constitutional principles.) Assign students to look for different issues or principles for a specified length of time, e.g., one month. Review both national and local newspapers.

a. Ask students to report their findings to the class. List them on the board, classified according to different issues or principles, such as freedom of religion, separation of church and state, equal educational opportunity, rights of the accused, or more general principles such as federalism, judicial review and separation of powers. Base your choice of principles to be examined upon those covered in the series, as well as those of interest to your community. Note which news items are listed under different principles. How are they related? Do they come into conflict with one another? Analyze and discuss.

b. Make copies of the Constitution available to students. Assign newspaper items on different issues or principles to students. Ask them to match as many relevant parts of the Constitution as they can with these. Have them report to the class. List results on the board by classifying news items according to different sections of the Constitution, e.g. Article I, the Fourteenth Amendment, etc. Discuss results. Which ones overlap?

c. Based on the above, prepare a survey of ten national and local news items of current interest to your students and in your community. Ask students to "take a stand" by completing the survey. Next, have them conduct a community survey. For information on conducting surveys and follow-up activities, see *Out of the Classroom* on page 1 of this guide.

d. Assign students to do a "content analysis" of television programs, based on the methods for newspapers suggested above.

GENERAL RESOURCES

Periodicals

Update On Law-Related Education. Recent issues of this magazine, published 3 times a year, focus on ideas and teaching strategies on the Constitution for grades 5-12. ABA/Order Fulfillment. A special bicentennial packet is available for $16.50 (PC #738-0100); $10.50 for annual subscription (PC #738-2000).

this Constitution. Excellent "bicentennial chronicle" includes scholarly articles, original documents, curriculum materials and information on bicentennial programs and resources. Project '87. Back issues available, $4.00 each.

Curriculum Materials

Celebrating Our Constitutional Heritage with Young People. 1987. Handbook of activities and resources for use in secondary schools and communities. ABA/YEFC. Cost: $2.00.

Lessons on the Constitution, John J. Patrick and Richard C. Remy. 1985. Designed to supplement high school

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history, government and civics classes. Includes detailed lessons plans, reproducible worksheets and selections from key documents. Developed by Project '87. Social Studies School Service. Cost: $19.50.

Reasoning With Democratic Values: Ethical Problems in U.S. History, Alan L. Lockwood and David E. Harris. 1985. Supplementary curriculum program for secondary schools presents ethical problems in U.S. history for classroom discussion. Stresses that responsible decision making requires understanding of how values often conflict in specific cases. Two students activities volumes ($8.95, $11.95) and instructor's manual available ($11.95). Teachers College Press, 1234 Amsterdam Ave., New York, NY 10027.

Equal Justice Under Law: The Supreme Court in American Life, M. Harrell and B. Anderson. 1982. Cost: $4.95. *Instructor's Guide,* Isidore Starr *et al.* 1985. Soft-cover student book for junior/senior high school students presents historical review of the Supreme Court. Instructor's guide provides teaching strategies, a helpful glossary and succinct guidelines for using case studies and conducting moot courts. Supreme Court Historical Society, 1511 K Street, N.W., Washington, DC 20005. Cost: $3.95.

The Enduring Constitution: A Bicentennial Perspective, Jethro K. Lieberman. 1987. New illustrated, comprehensive book on the Constitution, which places it in the tradition of constitutionalism, "the spirit of law, rights, and orderly procedures that animates a free society and keep it free." West Publishing Co. Cost: $34.00.

Resource Materials

We The People — The Constitution in American Life, Robert S. Peck. 1987. Companion volume to the PBS series includes chapters on issues raised in each of the four programs. Harry N. Abrams, Inc., 100 Fifth Ave., New York, NY 10011. Cost: $29.95.

The Blessings of Liberty: Bicentennial Lectures at the National Archives, Robert S. Peck and Ralph S. Pollock, eds. 1986. ABA/Order Fulfillment. Contains popular essays by scholars on constitutional topics, many of which provide pertinent background information to the programs. Cost: $4.95.

Novus Ordo Seclorum: The Intellectual Origins of the Constitution, Forrest McDonald. 1985. Synthetically treats the origins of the Constitution, emphasizing the English, Scottish and French contributions to American political thought. Univ. Press of Kansas, 329 Carruph O'Leary, Lawrence, KS 66045. Cost: $9.95, paperback.

Are We To Be A Nation? The Making of the Constitution, Richard B. Bernstein with Kym S. Rice. 1987. Focuses on drafting and ratification of the Constitution. Illustrated with materials from the New York Public Library's exhibition on the bicentennial of the Constitution. Harvard Univ. Press, 79 Garden Street, Cambridge, MA 02138. Cost: $14.95.

A Machine That Would Go of Itself: The Constitution in American Culture, Michael Kammen. 1986. Examines how the Constitution has been perceived and understood through two centuries of American popular culture. Alfred A. Knopf. Cost: $29.95.

What the Antifederalists Were For, Herbert J. Storing. 1984. Introduces the political thought of those opposed to ratifying the original Constitution. University of Chicago Press, 5801 S. Ellis Ave., Chicago, IL 60637. Cost: $5.50.

The Framing of the Constitution of the United States, Max Farrand. 1913. Short classic account of the Constitutional Convention taken from Madison's notes and other sources. Yale University Press, 302 Temple Street, New Haven, CT 06520. Cost: $9.95.

On Revolution, Hannah Arendt. 1963. Incisive analysis of the principles underlying the U.S. Constitution within a well-informed historical and comparative perspective. Penguin Books. Cost: $7.95.

Distributors

The following list includes those distributors cited more than once throughout this guide.

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